

September 9, 2004

Gene Merriam, Commissioner
Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4047

Re: In the Matter of the Appeal of the Off-Highway Motorcycle
Citations Issued to Tyler Glenn Swaser
Citation Nos. 733194-96
OAH Docket No. 3-2000-16077-2

Dear Commissioner Merriam:

On September 3, 2004, a prehearing conference was held by telephone on the trespass citations listed above. Conservation Officer Karl Hadrits, Tyler Swaser, and Darlene Karduck, Tyler's mother, participated in the conference. The prehearing conference was tape-recorded. During the conference, the parties agreed that the prehearing conference would serve as the evidentiary record and that my recommendation would be based on the facts as determined on that record.

On July 3, 2004, Conservation Officer Hadrits had three separate encounters with Mr. Swaser. The first two encounters resulted in criminal citations; the third encounter resulted in a criminal citation and three civil citations. Although the criminal citations are not part of this proceeding, I have included in this report a description of all three encounters to provide the general background behind the civil citations issued at the end of that day.

The relevant facts are largely undisputed. On the morning of that day, Officer Hadrits received two telephone complaints from area residents about a group of men staying at the home formerly owned by Jerry Houghton on Miller Lake. The complaints alleged excessive all-terrain vehicle (ATV) traffic on roads in Crow Wing State Forest and wetlands in the area, illegal use and operation of ATVs, drinking, operating at high speeds on roads and trails, and damage to wetlands. Mr. Houghton had died about six weeks before. Officer Hadrits knew Mr. Houghton to be a person who was concerned about the environment and a frequent caller about any violations occurring in the area. Officer Hadrits drove to the area and found that Tyler Swaser, his brother, several friends of theirs, and Darlene Karduck, Swaser's mother, were staying at the cabin. Ms. Karduck is Jerry Houghton's sister. Officer Hadrits also observed several ATVs, dirt bikes, and SUVs parked around the house and garage. After observing Tyler Swaser's driving, Officer Hadrits asked for Swaser's driver's license, which identified his birthday as July 12, 1986. Officer Hadrits issued Mr. Swaser criminal citations for operating an

ATV in an unsafe manner and operating an ATV without a helmet while less than 18 years of age. He issued other citations to some of the other boys. He also provided Mr. Swaser with a copy of the regulations concerning off-road vehicles, which Mr. Swaser threw onto the ground. Mr. Swaser became angry at Officer Hadrits for saying something along the lines of "Jerry wouldn't go in for all this." After the citations were issued, Ms. Karduck approached Officer Hadrits and told him that she appreciated his efforts to provide guidance to the boys and that she hoped the citations would be a good lesson for them.

As Officer Hadrits was preparing to leave the area, two other residents approached Officer Hadrits' vehicle and complained that the boys had been running wild all weekend. The residents asked Officer Hadrits to return to the area later in the day to check on them.

Officer Hadrits returned to the area between 3 and 4 p.m. that day and parked along the Black Bear Lake public access road. He observed Mr. Swaser driving up and down the road at a high rate of speed, wearing no helmet. In talking to Mr. Swaser about this conduct, Mr. Swaser was rude and defiant. He suggested that Officer Hadrits could write him as many tickets as he wanted and nothing could be done to him because he was a juvenile. Officer Hadrits issued another criminal citation for operating the ATV without a helmet. He took the key to the vehicle and mailed it to its registered owner, who lives in Hastings. He advised Mr. Swaser to push the vehicle back to the cabin. He also advised Swaser that he would continue to patrol in the area and that he would take Swaser into custody for any further violations.

At about 11:20 p.m. that night, Officer Hadrits returned to the area. As he drove down the Black Bear Lake public access road, he saw Mr. Swaser and his friends coming toward him on a variety of vehicles. When Officer Hadrits activated his lights, the riders scattered. Mr. Swaser turned around and attempted to flee down the road in the same direction Officer Hadrits was proceeding. Eventually Mr. Swaser pulled over to the side of the road. He was riding a CRF Honda dirt bike with no headlight or taillights. He had a battery-operated flashlight taped to the handlebars. He was not wearing a helmet, and he smelled of alcohol. He had purchased the motorcycle the previous day but had not applied to register it, based on his mistaken belief that registration was not required.

Officer Hadrits took the key and advised Mr. Swaser to push the motorcycle back to the cabin. He later returned the key to Mr. Swaser by mail. He did not arrest Mr. Swaser because the closest juvenile detention facility that would take him was more than 100 miles away. Based on this last incident and after consulting with his supervisor, Officer Hadrits issued to Mr. Swaser a criminal citation for using alcohol and three civil citations: (1) operating an unregistered off-highway motorcycle, in violation of Minn. Stat. § 84.788, subd. 3; operating an off-highway motorcycle on a public road, in violation of Minn. Stat. § 84.795, subd. 1; and operating an off-highway motorcycle without a helmet while under age 18, in violation of Minn. Stat. § 84.793, subd. 2.^[1]

Mr. Swaser does not dispute that the motorcycle was not registered; that he was on a public road; that he was not wearing a helmet; and that he was not 18 years of age at the time. He and his mother believe that Officer Hadrits targeted him unfairly because there were others riding in the area without helmets that weekend who did not receive tickets. His mother stated that the boys were acting out that weekend because of the recent death of her brother and the unexpected death of their grandfather the day before. In response, Officer Hadrits stated that he spent the whole day in that area and ticketed many other persons who committed violations; however, Mr. Swaser was the only person who committed repeated violations in the course of the day.

Based on all the statements by Officer Hadrits, Mr. Swaser, and Ms. Karduck, I find that Mr. Swaser committed the violations for which he was cited. Therefore, Civil Citation Nos. 733194-96 were properly issued and should be affirmed.

I am closing our file in this matter. The record is enclosed with the exception of the tape of the telephone conference. If you would like a copy of the tape, please contact our office in writing or by telephone at 612-341-7448.

The law requires the final decision in this matter to be made by the Commissioner or his designee. The law^[2] further requires that the Commissioner wait at least five days after receipt of this recommendation before making that final decision and allow Mr. Swaser to submit comments to the Commissioner on this recommendation within that five-day period. The Commissioner must send a copy of his final decision to Mr. Swaser. If the Commissioner fails to act within 90 days after the record before the Commissioner closes, this recommendation will become the final decision in this matter.^[3]

Sincerely,

/s/ Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge
612-341-7602

cc: Tyler Swaser
Conservation Officer Karl Hadrits
Pat Holt, DNR Enforcement

^[1] Under Minn. Stat. § 84.775, subd. 1, a conservation officer may issue a civil citation for violation of Minn. Stat. §§ 84.788, subd. 3; 84.795; and 84.793(2).

^[2] Minn. Stat. § 116.072, subd. 6(e).

^[3] Minn. Stat. § 14.62, subd. 2a.